

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 11, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1098

Cir. Ct. No. 2012SC4984

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

KENNETH ERDMANN,

PLAINTIFF-COUNTER DEFENDANT-APPELLANT,

V.

VILLAGE STORAGE OF OCONOMOWOC LLC,

DEFENDANT-COUNTER CLAIMANT-RESPONDENT,

WALTER G. GARLOCK AND SILVER LAKE AUTO CENTER INC.,

DEFENDANTS-COUNTER CLAIMANTS.

APPEAL from a judgment of the circuit court for Waukesha County:

J. MAC DAVIS, Judge. *Affirmed.*

¶1 REILLY, J.¹ Kenneth Erdmann appeals a judgment awarding \$2525 plus costs to Village Storage of Oconomowoc LLC for unpaid rent and late fees on a self-service storage unit. Erdmann contends that the circuit court erred when it found that he orally agreed to modify an existing rental agreement with Village Storage to add him as a co-lessee. He also argues that the circuit court erred in finding that Village Storage's notice of its lien rights stated in capital letters in the rental agreement satisfied WIS. STAT. § 704.90(3)(b). We affirm as the court had sufficient evidence that Erdmann and Village Storage orally modified the rental agreement and as Village Storage's capitalized notice substantially complied with the statute.

¶2 Village Storage entered into a written agreement with Erdmann's mother in January 2009 for the rental of a storage unit where Erdmann stored his and his children's personal items. A few months later, Erdmann provided his contact information to a Village Storage employee and directed that future correspondence should go to him. During the next three and one-half years, Erdmann made sporadic payments on the unit. His mother helped him pay rent and also talked with the company's president to prevent his eviction. After not receiving rental payments for four months, Village Storage locked Erdmann out of the unit and notified him in June 2012 that his property would be sold if he did not pay his bill. Erdmann filed a small claims action for replevin; Village Storage filed a counterclaim for overdue rent and late fees.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶3 At a trial de novo, the circuit court found that Village Storage and Erdmann had orally modified the written rental agreement to add Erdmann as co-lessee of the storage unit, binding him to that agreement. The court also determined that the rental agreement satisfied WIS. STAT. § 704.90(3)(b) as it provided notice of Village Storage's lien on Erdmann's property in capital letters that called attention to the clause. As such, the court granted judgment to Village Storage against Erdmann. Erdmann appeals.

¶4 Erdmann first contends that the circuit court erred when it found that he and Village Storage had orally modified the written agreement to add him as a co-lessee with his mother. He argues that the court should have determined that he entered into a new agreement with Village Storage that replaced the agreement with his mother and that, as it was oral and not written, this new agreement violated WIS. STAT. § 704.90(2m) and could not be enforced pursuant to § 704.90. Erdmann's challenge implicates the circuit court's factual findings. We uphold such findings unless they are clearly erroneous, examining whether sufficient evidence exists in the record from which the circuit court could have reasonably determined that the parties modified the written agreement. *See Royster-Clark, Inc. v. Olsen's Mill, Inc.*, 2006 WI 46, ¶24, 290 Wis. 2d 264, 714 N.W.2d 530.

¶5 Based upon our review of the record, the circuit court's finding is not clearly erroneous. Evidence established that the parties never terminated the original agreement in accordance with the agreement's express method for termination. Additionally, both Erdmann and his mother made rental payments after Erdmann became the primary contact for the unit in May 2009, and his mother communicated with Village Storage to prevent eviction from the unit. The court had sufficient evidence to support its finding that the written agreement was orally modified to add Erdmann as co-lessee of the unit.

¶6 Erdmann next argues the court erred in finding that Village Storage complied with WIS. STAT. § 704.90(3)(b) by providing notice of its lien rights in capitalized letters—rather than the statutory requirement of “boldface type”—in the rental agreement. Whether a party has failed to comply with a statutory requirement is a question of law that we review de novo. *Walgreen Co. v. City of Madison*, 2008 WI 80, ¶17, 311 Wis. 2d 158, 752 N.W.2d 687.

¶7 We agree with the circuit court that Village Storage’s notice of its lien rights to Erdmann’s property, provided by capitalizing the language in the rental agreement, substantially complied with WIS. STAT. § 704.90(3)(b). “Substantial compliance” is recognized as a way to satisfy statutory notice provisions. *Radtke v. City of Milwaukee*, 116 Wis. 2d 550, 555-56, 342 N.W.2d 435 (1984). Substantial compliance, while not requiring complete compliance, requires compliance with the substantive objectives of the statute. *State v. Wilke*, 152 Wis. 2d 243, 250, 448 N.W.2d 13 (Ct. App. 1989). We presume that the legislature’s requirement that self-service storage facilities’ rental agreements state their lien rights in “boldface type” is aimed at calling attention to the language and providing notice to lessees. Capitalizing letters that are surrounded by non-capitalized text, as was done in Village Storage’s rental agreement, serves the same objective. Therefore, Village Storage substantially complied with § 704.90(3)(b) and may enforce its judgment pursuant to the statute.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

